



**IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN**

Civil Appeal Number 02 of 2026
Supreme Court Civil Case No. 46 of 2025

BETWEEN BT25 Appellant

AND Republic of Nauru Respondent

Before: Khan P
 Palmer JA
 Coates JA

Date of Hearing: 15 June 2026
Date of Judgment: 09 July 2026

Case may be cited as: *BT25 v The Republic*

CATCHWORDS: Whether the Tribunal failed to make adequate finding to rely on state protection – Whether the Tribunal misunderstood the law in that respect – Whether the issue of state protection was material to the outcome of the refugee claim application.

APPEARANCES

Counsel for the Appellant: M Kenneally
Counsel for the Respondent: R O'Shannessy

JUDGMENT

1. **BY THE COURT:** This is an appeal against the judgment of Brady J dated 24 February 2026, when he dismissed the appellant's appeal from the decision of the Refugee Status Review Tribunal ('Tribunal') dated 31 July 2025.
2. The grounds of appeal in this Court are the same as in the Court below. The grounds are that the primary judge erred by failing to find that:
 - a) The Tribunal failed to make adequate findings to rely on "state protection" or misunderstood the law in that respect.
 - b) The Tribunal failed to give adequate consideration to the appellant's submissions on state protection, or failed to comply with s34(4)(b) or s34(4)(c) of the Refugees Convention Act 2012 ('Act') in relation to state protection.

BACKGROUND

3. The appellant is a citizen of Bangladesh. He arrived in Australia in February 2024 and on 18 February 2024 he was transferred to Nauru pursuant to a Memorandum of Understanding between the Governments of Nauru and Australia.
4. On 7 March 2024 he made an application to the Secretary of the Department of Multicultural Affairs ('Secretary').
5. The applicant claimed to fear persecution based on his political opinion in support of the Bangladesh Nationalist Party (BNP) and was opposed to the established Awami League (AL) party. He claimed to have been with the Chattra Del (CD), the student wing of the BNP, and to have been threatened by people from the Chattra League (CL), the student wing of AL.
6. The appellant claimed that his uncle, Sohrab Khan, was a BNP politician and he assisted him during the elections in January 2024. He claimed that his uncle was killed on 8 April 2024.
7. At the RSD interview, the appellant claimed to have been an advocate against drug dealing and illegal sand removal by AL supporters. He claimed that one of his friends who interfered with the illegal activity was killed. The appellant claimed that CL supporters made threats to kill him if he did not stop opposing their work.
8. On 10 September 2024, the Secretary made a decision that the appellant was neither recognised as a refugee nor owed complementary protection under the Act.

9. On 26 September 2024, the appellant made an application for review to the Tribunal and on 21 January 2025 the appellant provided a further statement to the Tribunal dated 29 January 2025.
10. On 31 January 2025, the appellant appeared before the Tribunal and gave evidence. He was assisted by an interpreter and his legal representative made submissions on his behalf.
11. On 31 July 2025 the Tribunal delivered its decision and affirmed the decision of the Secretary.
12. On 5 August 2025, the appellant appealed to the Supreme Court.

THIS APPEAL

13. Mr Kenneally submits this appeal turns on whether the Tribunal's state protection reasoning at [110]-[111] form part of the dispositive reasonings of the appellant's claim. The appellant accepts that if the Tribunal disposed of all the relevant claim at [109], then in accordance with the recent decision of *BL 25 v The Republic*¹, there is no error of law or any basis for any relief.
14. However, Mr Kenneally contends that this is not the case. He submits that there was a live claim of future risk arising from his intended future conduct and [110]-[111] is part of the reasons that addressed that claim.
15. Mr Kenneally submits that even if [110] is "reinforcing" the conclusion at [109], it is still part of the conclusions in relation to those claims – on either basis the Tribunal was relying on the availability of state protection to dispose of his claims and erred in not considering his submissions or failing to apply the law of state protection correctly summarised in *BL25* at [12].
16. We shall set out [108]-[111] of the Tribunal's decision:

[108] In summary, the Tribunal accepts that the applicant was a low-level supporter of the CD and BNP who was opposed to illegal activities in his village and local area, namely sand dredging and the selling of illicit drugs. However, for the reasons given above, the Tribunal is not satisfied that the applicant was the vice-president of his local chapter of the CD or played a prominent or leadership role in activities to thwart illegal sand dredging and drug trafficker in his local area [sic]. Nor does the Tribunal accept that he was threatened, attacked or his family and their home were attacked because of his opposition to illegal sand dredging and drug trafficking.

¹ [2026] RCA (unreported, 10 June 2026)

[109] The Tribunal finds that the applicant did not have any prominence for reason of his support of CD and BNP or his concerns about illegal activities in the local area. He did not experience threats or other harm amounting to persecution for reasons of any such political opinion, actual or imputed or his membership of any associated particular social group and he did not leave Bangladesh fearing for his safety. This leads the Tribunal to infer that there is no reasonable possibility of him being persecuted in Bangladesh due to his political opinion or membership of any particular social group arising from these claims.

[110] The significant changes to the political landscape since August 2024, discussed at the hearing, reinforce this conclusion. They mean that AL-affiliated people in his local area would not be able to act with impunity, and the authorities would be more likely to offer him assistance and protection if he experienced conflict with people engaged in criminal behaviour such as drug dealing and drug dealing [sic].

[111] The Tribunal is therefore satisfied that if the applicant returns to Bangladesh, he will have access to state protection from AL supporters, illegal sand dredges and drug traffickers in his village and that their affiliation with the AL will not prevent his access to such protection. In making this assessment, the Tribunal considers that the country information suggests that the influence of AL leaders (at both the national and local level) has been diminished by reason of the changes which have taken place since the change of government in August 2024.

17. Mr Kenneally submits that the appellant's relevant claim was that he continued to hold political opposition and interference with illegal drug dealers and sand dredgers; and the Tribunal identified that as two distinct integers of risk:
 - a) Past profile claim at [34]-[37], [61]-[63], [108]-[109];
 - b) Future conduct claim – risk arising from appellant's intention to resume opposition on return at [77] the Tribunal stated that he would stand against drug dealers and sand dredgers when he returned.
18. Mr Kenneally submits that notwithstanding the political changes in August 2024 in Bangladesh, criminal activity would persist and police protection would be ineffective.
19. Mr Kenneally contends that at [109] of the Tribunal's decision advanced the appellant's claim to a risk arising from past profile and it did not address future conduct claim at [77]

– that there was no finding that the appellant would face no risk if he were to resume his opposition upon his return.

20. Mr Kenneally submits that the reasonings at [110]-[111] addresses the future conduct claim and he submits that the Tribunal did not make any findings of what future conduct the appellant may engage in against the drug dealers or the sand dredgers – nor did the Tribunal engage to consider whether such conduct would expose the appellant to harm.
21. Mr Kenneally submits that at [110]-[111] should not be treated as surplusage because words such as “*in any event*” or “*even if*” analysis is absent; that the way [109] is framed is not the ultimate conclusion on refugee status – whereas [114] is the cumulative and dispositive conclusion.
22. Mr Kenneally submits that the Tribunal did not find at its reasoning at [109] or elsewhere that the drug dealers or the sand dredgers would not harm the appellant in the future for any reason. This was a live claim of future conduct at [77] capable of giving rise to that conflict and it was not resolved at [109].
23. Mr O’Shannessy submits that the appeal turns on [108]-[111] of the Tribunal’s decision. He submitted that at reason [108] the Tribunal accepted that the appellant was a low-level supporter of CD and BNP and was opposed to the illegal sand dredging and selling of illicit drugs.
24. He submits at [109] the Tribunal found:
 - 1) That the appellant did not have any prominence for reasons of his illegal activities in the local area;
 - 2) He did not experience any threat or harm;
 - 3) He did not leave Bangladesh fearing his safety.
25. Mr O’Shannessy submits that the Tribunal reached the conclusion that the appellant had no reasonable possibility of being persecuted for those reasons in the future.
26. He further submitted that the primary judge found that the Tribunal’s findings at [108]-[109] were dispositive of the appellant’s refugee claim and complementary protection claim; and that the Tribunal was not obliged to address the issue of state protection.
27. Mr O’Shannessy submits that the respondent disputes the appellant’s assertion that the Tribunal did not deal with “forward looking risk faced by the appellant” is not correct as it expressly considered that risk in the final sentence of [109] when it relied on its findings about the past events and stated that:

This leads the Tribunal to infer that there is no reasonable possibility of him being persecuted in Bangladesh due to his political opinion or membership of any political social group arising from these claims.

28. Mr O'Shannessy submits that the appellant is straining to identify two distinct integers of risks – past claim which was dealt with at [109] and the future conduct claim which the Tribunal dealt with at [110]-[111]. He submits that this kind of distinction is rather artificial.
29. Mr O'Shannessy submits that the appellant's protection claim was never bifurcated in this way before the Secretary or the Tribunal.
30. Mr O'Shannessy submits that in the Court below, the appellant accepted the findings at [109]-[111] to be surplus – see [23] where His Honour stated:

[23] Counsel for the Appellant accepted that in relation to the Refugee Convention claim, the findings at [110] and [111] might properly be thought to be “surplus”. That is because of the finding at [109] that there was no reasonable possibility of the Appellant being persecuted in Bangladesh due to his political opinion or membership of any particular social group. Having reached that conclusion, there was no reason, at least for the purposes of the Refugee's Convention claims, for the Tribunal then to “reinforce” this conclusion with its findings at [110] and [111].

31. Mr O'Shannessy submits that the appellant is now attempting to draw a distinction between the past and the future claim which was never advanced in that manner during the hearing before the Secretary or the Tribunal. Mr O'Shannessy submits that based on the appellant's low-level profile as opposed to the drug dealers and sand dredging and that did not lead to the attack in the past and therefore the Tribunal made the findings at [108]; and that from those findings the Tribunal inferred that there was no reasonable possibility of the appellant being persecuted for those reasons in the future at [109].
32. Mr O'Shannessy relied on the case of *DWN028 v Republic of Nauru*² where it is stated at [21]

[21] In matters like this, it is important to bear in mind Gleeson CJ's admonishment in *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*³ that the system of judicial review of administrative action which operates in matters of this kind means that by the time a case reaches this Court it may be at the fifth level of decision making (or, as in this case, the fourth) after the appellant has failed at each level below. That being so, there is a real danger of an appellant seeking to put his

² [2018] NRHCA 3, [21] (per Kiefel CJ, Gageler and Nettle JJ)

³ (2003) 216 CLR 473 at 478-479 [1]; [2003] HCA 71.

or her case before this Court in a way that it was not put below and of the appellant criticising the reasoning of the decision maker in a manner that overlooks the forensic context in which the reasoning was expressed. For that reason, as Gleeson CJ emphasised⁴, the position which this Court has taken, and to which it adheres, is that, upon judicial review, the decision of the decision maker must be considered in light of the basis on which the application was put before the decision maker and not upon some entirely different basis that may only occur to the appellant's lawyers at this later stage of the process.

33. Mr O'Shannessy further submits that the Tribunal had no reasons to consider whether the appellant's conduct or his prominence would escalate in the future as the appellant gave no evidence either before the Secretary or the Tribunal to that effect that his past conduct would differ from the future – the highest form of evidence is at the Tribunal's decision at [77] where it is stated that "*might*" reconvene his stand against the drug dealers and sand dredgers. At [77], the Tribunal used the word "*might*" and in the appellant's submissions dated 19 June 2026, Mr Kenneally at [2(b)] used the word "*would*". Our understanding is that the word "*might*" contains an element of uncertainty.
34. The Republic submits that the appellant's representative advanced two separate concepts – effective state protection and changes in Bangladesh and that the Tribunal was responding to those matters rather than a distinct "future conduct claim" and in the process of doing so mentioned the issue of state protection.
35. His Honour found at [45] of the judgment that; and later at [48] His Honour states:

[48] It is possible that the Tribunal felt compelled to mention the issue of state protection because the Appellant's representative had raised it in his submissions. Perhaps it was simply a matter of reinforcing a prior conclusion. Regardless of the reason, the finding that there was no reasonable risk of persecution was dispositive of the Refugees Convention claim. The finding that there was otherwise no reasonable possibility or real risk of other treatment which would trigger Nauru's complementary protection obligations was similarly dispositive in relation to the complementary protection claim. Reluctant as I am to conclude that two paragraphs in a decision of a statutory body such as the Tribunal were mere surplusage and of no operative effect, it seems to me that such a conclusion is compelled by fairly reading the totality of the Tribunal Decision in context.
36. At [49] His Honour reiterates and states:

[49] The Tribunal's findings about state protection at paragraphs [110] and [111] were therefore entirely irrelevant to the outcome of the application to the Tribunal, whether as to the Refugees Convention claim or the complementary protection

⁴ *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 at 479 [1].

claim. The factual findings made by the Tribunal necessarily and inevitably denied a lack of state protection as a basis for a claim for protection, whether under the Refugees Convention or otherwise: see *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at 354 [95] per McHugh, Gummow and Hayne JJ

37. The appellant's assertion that a live claim had arisen as to his future conduct at [77], is in our view, misconceived as no such claim was evident. On a plain reading of [77] the Tribunal states that the appellant "*might*" continue his opposition to drug dealers and sand dredgers – that in our respectful opinion was an uncertain claim, it did not even rise to the level of an unmeritorious claim and the Tribunal was not obliged to deal with such claim and failure to do so does not constitute an error of law – see *WET054 v Republic of Nauru*⁵ and *REF001 v Republic of Nauru*⁶
38. The primary judge was correct in his observations at [48]-[49] and we find that there is no error of law and the appeal is dismissed.

ORDER

1. The appeal is dismissed

DATED this 09 day of July 2026



Khan P
President of the Nauru Court of Appeal



Palmer JA
Justice of the Nauru Court of Appeal



Coates JA
Justice of the Nauru Court of Appeal



⁵ [2023] NRCA8, [45]

⁶ [2018] NRSC54